

PT 00-51

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**REALISM
UPDATE THEATER,
APPLICANT**

v.

**ILLINOIS DEPARTMENT
OF REVENUE**

**No. 00-PT-0043
(99-16-0489)**

P.I.N: 13-26-118-002

Cook County Parcel

**Real Estate Tax Exemption
for 1999 Assessment Year**

**Alan Marcus
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This proceeding raises the following issues: first, whether privately-owned property that was leased to the Realism Update Theater (hereinafter the “applicant”) during a portion of the 1999 assessment year was owned by an “institution of public charity,” as required by Section 15-65(a) of the Property Tax Code, 35 ILCS 200/1-1 *et seq* (hereinafter the “Code”); and second, whether real estate identified by Cook County Parcel Index Number 13-26-118-002 (hereinafter the “subject property”) was “leased or otherwise used with a view to profit,” in violation of Section 15-65(a) at any point during the 1999 assessment year.

The controversy arises as follows:

Applicant filed a Property Tax Exemption Complaint with the Cook County Board of (Tax) Appeals on November 10, 1998. Dept. Ex. No. 1. The Board reviewed applicant's complaint and recommended to the Illinois Department of Revenue (hereinafter the "Department") that the requested exemption be denied. Dept Ex. No. 2. After reviewing the Board's recommendation, the Department issued a determination denying the requested exemption, on grounds that the subject property is not in exempt ownership and not in exempt use. Dept Ex. No. 3. Applicant thereafter filed a timely appeal as to this denial and subsequently presented evidence at a formal evidentiary hearing. Following submission of all evidence and a careful review of the record, it is recommended that the Department's initial determination in this matter be affirmed.

FINDINGS OF FACT:

A. Preliminary Considerations and Description of the Subject Property

1. The Department's jurisdiction over this matter and its position therein are established by the admission into evidence of Dept. Ex. Nos. 1, 2 and 3.
2. The Department's position in this matter is that the subject property is not in exempt ownership and not in exempt use. Dept. Ex. No. 3.
3. The subject property is located at 2957 N. Pulaski, Chicago, IL 60641 and improved with a 2 story building that occupies a total of 1,524 square feet. Dept. Ex. No. 2.
4. Christina Athanasiades, a private individual, acquired ownership of the subject property by means of a warranty deed dated October 21, 1997. Applicant Ex. No. 1.

5. Ms. Athanasiades, who is applicant's president, obtained ownership of the property because applicant could not afford to purchase the property in its own name. Dept. Ex. No. 1; Tr. p. 4, 11.

B. Applicant's Corporate and Financial Structures

6. Applicant was incorporated under the General Not For Profit Corporation Act of Illinois on September 27, 1991. Its basic organizational purposes are, per its Articles of Incorporation, to further the dramatic arts by promoting and presenting plays, especially newer ones written by Chicago playwrights. Applicant Ex. No. 3; Tr. pp.13-14.
7. Applicant's by-laws state, *inter alia*, that: (1) it shall charge "only half price to senior citizens and students[;]" (2) actors and actresses shall be admitted free of charge, provided that they bring a copy of their resume; (3) there shall be no admission charged to any person who can prove that he or she cannot afford to pay; (4) the by-laws shall be placed in a prominent place in the premises. Applicant Ex. No. 14.
8. The Internal Revenue Service determined that applicant qualified for exemption from federal income tax under Section 501(C)(3) of the Internal Revenue Code on December 2, 1992. This exemption remained in full force and effect throughout the 1999 Assessment Year. Applicant Ex. No. 9.

9. Applicant has no capital stock or shareholders. Its sources of income for the period March 30, 1999¹ through December 31, 1999 were as follows:

SOURCE	AMOUNT	% of TOTAL²
Performance-Related Revenues	\$ 1,700.00 ³	85%
Contributions	\$ 290.00	15%
Total	\$ 1,990.00	

Applicant Ex. No. 10; Tr. pp. 17-18.

10. Ms. Athanasiades received \$2,250.00 in rental income from applicant during that period. *Id*
11. Applicant's expenses for the period March 30, 1999 through December 31, 1999 were as follows:

EXPENSE	AMOUNT	% of TOTAL
Public Liability Insurance	\$ 300.00	7%
Electricity	\$ 450.00	10%
Heating	\$ 826.00	18%
EXPENSE	AMOUNT	% of TOTAL

1. Ms. Athanasiades, who was applicant's sole witness at hearing, explained that the accounting period began on March 30, 1999 because her lease with applicant went into effect on that date. Tr. p. 30.

2. All percentages shown herein are approximations derived by dividing the amounts shown in the relevant category by the total revenues shown on the last line of the second column. Thus, \$1,700.00/\$1,990=.8543 (rounded four places past the decimal) or 85%.

3. According to the financial statement admitted as Applicant Ex. No. 10, this figure represents the "[t]otal from tickets after calculating the many discounts we give to senior citizens, students, artists, and two free complimentries [sic] tickets to our performers." However, the statement does not reveal the precise dollar amount of these discounts. Applicant Ex. No. 10.

Water Usage & Sewer	\$ 260.00	6%
Props & Miscellaneous	\$ 90.00	2%
Cleaning Supplies & Hygiene Items	\$ 130.00	3%
Rental Paid to Ms. Athanasiades	\$ 2,250.00	49%
Sum of All Other Expense Items (Including, <i>inter alia</i> , office supplies, printing & mailing, transportation and publicity, etc.) ⁴	\$ 273.00	1% or less for each expense item
TOTAL	\$ 4,579.00	

Id.

C. Use of the Subject Property

12. The subject property is located at 2957 N. Pulaski, Chicago, IL 60641 and improved with a 2 story building that occupies a total of 1,524 square feet and contains a basement. Dept. Ex. No. 2; Applicant Ex. No. 5; Tr. pp. 16-17.
13. The first floor contains a lobby, an 80-seat theater, restrooms, a backstage area and a porch; the second contains some equipment that (computer, telephone, etc.) that Ms. Athanasiades used for theater-related purposes. Applicant Ex. No. 5; Tr. p. 32.
14. Ms. Athanasiades acquired ownership of the subject property by means of a warranty deed dated October 21, 1997. Applicant Ex. No. 1.
15. The subject property was ostensibly vacant between the date of purchase and January 1, 1999. It remained vacant until Ms. Athanasiades entered

4. For a more detailed breakdown of the individual expenses within this category, *see*, Applicant Ex. No. 10.

into a lease contract with applicant on March 30, 1999. Applicant Ex. No. 2; Tr. p. 7, 11.

16. This contract provided, *inter alia*, that applicant was to: (1) pay Ms. Athanasiades rent in the amount of \$250.00 per month for a period of five years; (2) use the first floor for theater space; (2) use the second floor for office space and other purposes related to theater administration; and, (4) be responsible for paying all property taxes levied against the subject property as well as all of the expenses associated with its theatrical productions. Applicant Ex. No. 2; Tr. p. 7, 11.
17. The lease further provided that Ms. Athanasiades was to be responsible for providing heat and hot water for the building as well as paying for all insurance, utilities, repairs and other maintenance costs thereof. *Id*
18. The second floor was vacant from January 1, 1999 until Ms. Athanasiades moved into that portion of the building on September 16, 1999. Ms. Athanasiades used the second floor as her personal residence throughout the remainder of the 1999 assessment year. Tr. pp. 7, 35-36.
19. Applicant presented eight performances of “Much Ado About Nothing,” three performances of “Titanic,” eight performances of “The Scarlet Letter” and six performances of “Twelfth Night,” at the subject property after its leasehold went into effect. It did not present any other performances [or conduct any other activity at] the subject property during 1999. Applicant Ex. Nos. 7, 10; Tr. p. 31.

20. Applicant sold tickets for each of its performances. Ticket prices were \$12.00, \$7.00 for senior citizens and students. However, it did not refuse to admit anyone for failure to pay an admission charge. Applicant Group Ex. No. 6,40-41.
21. Approximately 10% of those who attended any given performance were senior citizens; another 5% were students. Tr. p. 32.
22. Applicant did not pay salaries to the actors who appeared in most of its plays. It did, however, furnish them with two free tickets to the play in which they are appearing. It did also, on occasion, provide them with a percentage of the gate receipts for that play. Tr. pp. 23, 25
23. Applicant used the basement for theater-related purposes, such as an entrance/exit and changing area, after March 30, 1999. Tr. pp. 36-39.

CONCLUSIONS OF LAW:

An examination of the record establishes that this applicant has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from 1999 real estate taxes. Accordingly, under the reasoning given below, the Department's initial determination in this matter, finding that the subject property did not satisfy the exempt ownership and exempt use requirements set forth in Section 15-65(a) of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq.*, should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for

agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code, (35 ILCS 200/1-1 *et seq*). The provisions of that statute which govern disposition of this case are found in Sections 200/15-65(a), which state, in pertinent part, that:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity.

35 ILCS 200/15-65(a).

Property tax exemptions are inherently injurious to public funds because they impose lost revenue costs on taxing bodies and the overall tax base. In order to minimize the harmful effects of these lost revenue costs, and thereby preserve the Constitutional and statutory limitations that protect the tax base, Section 15-65(a) and all other statutes conferring property tax exemptions are to be strictly construed in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Therefore, the subject property cannot be exempted under Section 15-65(a) unless it is owned and used in the precise manner prescribed by statute. North Shore Post No. 21 of the American Legion v. Korzen, 38 Ill.2d 231, 234 (1967).

Section 15-65(a) prescribes that the property in question be owned by a very specific type of entity, that being an “institution of public charity.” *See*, 35 ILCS 200/15-65(a). The person who owned the subject property throughout 1999, Ms. Athanasiades, does not qualify as an “institution of public charity” within the meaning of Section 15-65(a) because she is a private individual. Therefore, she does not fall within the class of owners whose properties the legislature intended to benefit through enactment of Section 15-65(a).

It is well established that private individuals do not qualify as exempt owners for property tax purposes, even if they lease their properties to otherwise exempt organizations. Victory Christian Church v. Department of Revenue, 264 Ill. App. 3d 919 (1st Dist. 1988). (Private individual/owner denied property tax exemption even though he leased subject property to a religious organization that used leasehold for exempt religious and school purposes); Wheaton College v. Department of Revenue, 155 Ill. App.3d 945 (2nd Dist. 1987). (Property leased by private individuals to appellant College held non-exempt even though it was used for college related purposes). Hence, the fact that Ms. Athanasiades leased the subject property to applicant, which may qualify as an “institution of public charity,”⁵ is of no legal significance herein. Therefore, that portion of the Department’s determination which found that the subject property was not in exempt ownership (i.e. not owned by an “institution of public charity”), as required by Section 15-65(a) of the Property Tax Code, should be affirmed.

With respect to the issue of exempt use, it is first noted that Section 15-65(a) specifically bars exemption where the property is “leased or otherwise use with a view to profit.” 35 ILCS 200/15-65(a). Rental properties that are used primarily to produce income for their owners are not considered to be in exempt use because they violate this prohibition, which applies even if the owners apply all of the income they derive from the leasing enterprise to further an exempt use. People ex. rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136, 140 (1924); Salvation Army v. Department of Revenue, 170 Ill. App.3d 336, 344 (2nd Dist. 1988).

5. For further discussion as to the exempt status of fine arts organizations in general, *see*, Randolph Street Gallery v. Department of Revenue, 1-00-0237 (August 9, 2000), wherein the court granted a charitable tax exemption to an entity that actually owned the subject property during the tax year in question. This applicant did not own the subject property at any point during the 1999. Therefore, while applicant may qualify as an “institution of public charity” under the criteria articulated in Randolph Street Gallery, the property it leased from Ms. Athanasiades is dissimilar from the one exempted in Randolph Street Gallery *precisely because* this applicant held no ownership interest in the subject property throughout the relevant time period. Based on this distinction, I conclude that while Randolph Street Gallery is instructive on the question of whether applicant qualifies for exempt status, it is not dispositive of the ultimate outcome herein.

Ms. Athanasiades received \$2,250.00 in rental income by leasing the subject property to applicant between March 30, 1999 and December 31, 1999. The amount of these rental receipts far exceeds that which can reasonably be considered nominal, *de minimus* or token rent, such as \$1.00 or less. Therefore, the above principles mandate that the subject property was not in exempt use while Ms. Athanasiades was leasing it to applicant.

It should also be noted that the first floor of the subject property was completely vacant, and therefore not actively used for any purpose, exempt or otherwise, before the leasehold went into effect. Therefore, that portion of the subject property was not in exempt use as a matter of law between January 1, 1999 and March 29, 1999. Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App.3d 981 (1st Dist. 1983). (church property that was completely vacant throughout the tax year in question held non-exempt). Similarly, the second floor was not in exempt use due to vacancy between January 1, 1999 and September 15, 1999. *Id.*

Furthermore, any uses that Ms. Athanasiades made of the second floor on or after September 16, 1999 were primarily for non-exempt residential purposes. Thus, while the record did indicate that Ms. Athanasiades did use some of the equipment located on the second floor (computer, telephone, etc.) for theater-related purposes, those uses were clearly incidental to those associated with her private residence. As it is the primary, rather than incidental, uses of real estate that determine its exempt status, (Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993)), I must conclude that the second floor was not in exempt use between September 16, 1999 and December 31, 1999. For this and all the above-stated reasons, that portion of the Department's determination which found that the subject property was not in exempt use, as required by Section 15-65(a) of the Property Tax Code, should be affirmed.

Applicant attempts to defeat the above conclusions by relying on its exemption from federal income tax. This argument is misplaced for several reasons. First, the

holder of that exemption, applicant, is an entity whose status as an Illinois not-for-profit corporation provides it with a legal identity that is separate and distinct from the private individual who owns the subject property. Second, applicant's exemption from federal income tax only establishes that it qualifies as an exempt organization for purposes of Section 501(c)(3) of the Internal Revenue Code.

That provision does not preempt the very specific exempt ownership and exempt use requirements contained in Section 15-65(a) of the Property Tax Code. Nor does the Section 501(c)(3) exemption prove that any part of the subject property was actually used for exempt purposes, as required by Section 15-40, during the period in question. In re Application of Clark v. Marion Park, Inc., 80 Ill. App. 3d 1010, 1012-13 (2nd Dist. 1980), *citing* People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill.2d 450 (1970). Therefore, applicant's exemption from federal income tax does not provide a legally sufficient basis for exemption the subject property from 1999 real estate taxes under Section 15-65(a) of the Property Tax Code.

Furthermore, it is briefly noted that applicant raises the issue of whether the subject property can be exempted under Section 15-35 of the Property Tax Code. This provision is the one that states, in pertinent part, that "...all property of schools ..." is tax exempt. 35 ILCS 200/15-35. The holding in Wheaton College v. Department of Revenue, 155 Ill. App.3d 945 (2nd Dist. 1987), cited *supra* at p. 9, and the analysis attendant to that citation establish that the private individual who owned the subject property throughout 1999 is not the statutorily-intended beneficiary of the exemption set forth in Section 15-35. Nor were her uses of that property, which I emphasize were income-producing in the first instance and privately residential in the second, ones that would qualify the subject property for exemption thereunder. Wheaton College, *supra*. Therefore, I decline to recommend that the subject property should be exempt from 1999 real estate taxes under Section 15-35 of the Property Tax Code.

In summary, the preceding analysis demonstrates that: (1) the subject property was not in exempt ownership, as required by Sections 15-65(a) and 15-35 of the Property Tax Code, because it was owned by a non-exempt private individual throughout the period in question; and, (2) the subject property was not in exempt use, as required by Sections 15-65(a) and 15-35 of the Property Tax Code, because it was primarily used for the non-exempt purpose of producing income for the private individual/owner thereof, during the relevant period. Therefore, I recommend that the Department's initial determination in this matter, issued by the Office of Local Government Services on March 30, 2000, be affirmed.

WHEREFORE, for all the above-stated reasons, it is my recommendation that real estate identified by Cook County Parcel Index Number 13-26-118-002 not be exempt from 1999 real estate taxes under Sections 15-65(a) and 15-35 of the Property Tax Code, 35 ILCS 200/1-1, *et seq.*

December 14, 2000
Date

Alan I. Marcus
Administrative Law Judge